NO. 49836-7-II

DIVISION II OF THE COURT OF APPEALS FOR
THE STATE OF WASHINGTON

EDNA ALLEN

and

MANUFACTURED HOUSING DISPUTE RESOLUTION PROGRAM,
WASHINGTON STATE ATTORNEY GENERAL'S OFFICE,

Petitioners,
v.

DAN & BILL'S RV PARK

Respondents.

RESPONSE BRIEF OF DAN & BILL'S RV PARK

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TABLE OF CONTENTS

TABLE OF AUTHORITIES……..…iii

I. INTRODUCTION 1

II. RESTATEMENT OF ISSUES 3

III. RESTATEMENT OF RECORD 5

A. Mobile Home Landlord Tenant Act, Generally RV's Park Operation..... 5
B. Pierce County's circa-2009 Pronouncement that RV Park is an RV Park and not a Mobile Home Park..... 6
C. Pierce County Superior Court's 2010 Pronouncement that MHLTA does not Apply to RV Park. 7
D. Complainant Allen's Tenure at RV Park. 7
E. Allen Complaint to Mobile Home Dispute Resolution Program. 8
F. Appeal to Superior Court 12

IV. STANDARD OF REVIEW & Burden 14

V. RV PARK BRIEF 17

A. The Court Should Affirm that Complainant Ms. Allen is not a Mobile Home Tenant 17

1. Mobile Home Lot..... 18
2. Mobile Home Park. 19
3. Park Model. 20
4. Recreational Vehicle. 22

B. Timing of Challenges to the OAH's Findings of Fact..... 23
C. The OAH decision was not arbitrary and capricious. 25
D. OAH Ruling Consistent with independent Pierce County Superior Court Order Establishes Room for Two Opinions 26
E. OAH Ruling Consistent with Pierce County Determinations and Permitting 31
F. Neither Ms. Allen Nor Mobile Home Program Sufficiently Challenged Findings of Fact on Appeal, and, Even if they had, the Facts are Supported by Substantial Evidence. 33
G. Policy Supports Affirming the OAH 39
H. Reversing the ALJ Order would have undesirable results.. 41

I. The Superior Court Erred by Awarding Attorney's Fees Against RV Park 42
a. Even if MHLTA Applied, RCW 59.30.040 Expressly Prohibited the Award. 42
b. Even if MHLTA applied, Superior Court awarded fees against wrong party 43
c. Even if MHLTA applied and RV Park was correctly charged, award amount was unreasonable 43
d. Hours spent unreasonable 44
e. Hourly rate unreasonable 46
f. Lodestar inappropriate 46
J. Attorney General's Lack of Standing to Appeal its Own Final Order 46
K. Request for Attorney's Fees 53

VI. CONCLUSION 54

TABLE OF AUTHORITIES

CASES

Absher Constr. Co. v. Kent Sch. Dist, 79 Wn. App. 841, 905 P.2d 1229, (1995) 44
Aloha Lumber Corp. v. Dep't of Labor & Indus., 77 Wash. 2d 763, 774, 466 P.2d 151 (1970) 50
Brotherton v. Jefferson Cty., 160 Wn. App. 699, 701 n.1, 249 P.3d 666 (Div. 2, 2011) 20
Callecod, 84 Wn. App. at 676 n.9 16
Cedar Grove Composting, Inc. v. City of Marysville, 188 Wn. App. 695, 730, 354 P.3d 249, 265 (Div. 1, 2015) 44
Citizens to Preserve Pioneer Park, L.L.C. v. City of Mercer Island, 106 Wn. App. 461, 473-74, 24 P.3d 1079 (Div. 1, 2001) 16
City of Redmond v. Central Puget Sound Growth Mgmt. Hearings Board, 136 Wn.2d 38, 45, 959 P.2d 1091 (1998) 17
City of Univ. Place v. McGuire, 144 Wn.2d 640, 652-53, 30 P.3d 453, 459 (2001) 16
Cornelius v. Dep't of Ecology, 182 Wn.2d 574, 585, 344 P.3d 199 (2015) 15
Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) 25
Darkenwald v. Emp't Sec. Dep't, 183 Wn.2d 237, 244, 350 P.3d 647 (2015) 15
DaVita, Inc. v. Washington State Dep't of Health, 137 Wash. App. 174, 183, 151 P.3d 1095, 1100 (Div. 2, 2007) 47
Dep't of Labor & Indus. v. Cook, 44 Wash. 2d 671, 673, 269 P.2d 962, 964 (1954) 50
Dir., Office of Workers' Comp. Programs, Dep't of Labor v. Newport News Shipbuilding & Dry Dock Co., 514 U.S. 122, 127, 115 S. Ct. 1278, 1284, 131 L. Ed. 2d 160 (1995) 52
Eastvold v. Superior Court for Snohomish Cty, 48 Wn.2d 417, 424, 294 P.2d 418 (1956) 49
Ermine v. Spokane, 143 Wn.2d 636, 650, 23 P.3d 492 (2001) 44
Goldmark v. McKenna, 172 Wn.2d 568, 578, 259 P.3d 1095 (2011) 50
Haugsness v. Gillespie, 10-2-13592-3 (Pierce Cnty Super Ct.) 7, 27
Haugsness v. State (King County Super Ct. 15-2-15446-5 SEA) 10
Hickethier v. Washington State Dept. of Licensing, 159 Wn. App. 203, 244 P.3d 1010 (2011) 15
Hillis v. Dep't of Ecology, 131 Wn.2d 373, 381, 932 P.2d 139 (1997) 17

Holiday Resort Cmty. Ass'n v. Echo Lake Assocs., LLC, 134 Wn..App. 210, 222, 135 P.3d 499 (2006), *review denied*, 160 Wn..2d 1019, 163 P.3d 793 (2007) 18
In re Narrows Real Estate, Inc. v. MHDRP, Consumer Protection Division, Attorney General __ Wn.App.__, __P.3d__ (Div. 2, 2017 No. 47766-1-II) 23, 24, 25
King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd., 142 Wn.2d 543, 553, 14 P.3d 133 (2000) 16
Mahler v. Szucs, 135 Wn.2d 398, 434-35, 957 P.2d 632, 966 P.2d 305 (1998) 44
Marine Enters. v. Sec. Pac. Trading Corp., 50 Wn. App. 768, 774, 750 P.2d 1290 (Div. 1, 1988) 44
Pierce Cty. Sheriff v. Civil Serv. Com, 98 Wn.2d 690, 695, 658 P.2d 648 (1983) 25
Schofield v. Spokane Cty., 96 Wn. App. 581, 586, 980 P.2d 277, 280 (1999) 15
Scott Fetzer Co. v. Weeks, 122 Wn.2d 141, 151, 859 P.2d 1210 (1993) 44
Seattle Bldg. & Const. Trades 129 Wash. 2d at 793-94 52
Seattle Bldg. & Const. Trades Council v. Apprenticeship & Training Council, 129 Wash. 2d 787, 797, 920 P.2d 581 (1996) 51
State ex rel. Lige & Wm. B. Dickson Co. v. County of Pierce, 65 Wn. App. 614, 618, 829 P.2d 217 (1992) 16
State v. Ross, 141 Wn.2d 304, 309, 4 P.3d 130 (2000) 16
State v. Rowe, 93 Wn.2d 277, 284, 609 P.2d 1348 (1980) 26
Tapper v. Employment Sec. Dep't, 122 Wn.2d 397, 402, 858 P.2d 494 (1993) 14
Willener v. Sweeting, 107 Wn.2d 388, 394, 730 P.2d 45 (1986) 16

STATUTES

CW 34.05.570 14
RCW § 59.30.010(1) 39
RCW § 82.50.530 21
RCW 34.05 ..... 1, 47, 48, 51
RCW 34.05.010(2) 48
RCW 34.05.425(1) 47, 48
RCW 34.05.425(1)(b) 47
RCW 34.05.530 51
RCW 34.05.570(1)(a) 15, 17
RCW 34.05.570(3)(e) 16
RCW 36.01.220 ..... 21, 22
RCW 4.84.340 ..... 14, 53

RCW 4.84.340-350 54
RCW 42.22A.130 40
RCW 43.10.030 49
RCW 43.10.040 49
RCW 43.22.440 40
RCW 43.22A.010 40
RCW 51.52.110 50
RCW 59.18 28
RCW 59.20 ..... 27, 28
RCW 59.20.030 ..... 28, 29, 30
RCW 59.20.030(10) 27
RCW 59.20.030(14) 27, 28, 29
RCW 59.20.030(17) 27, 29
RCW 59.20.030(18) 18
RCW 59.20.030(9) 29, 30
RCW 59.20.040 ..... 29, 30
RCW 59.20.080(3) 23
RCW 59.20.110 ..... 28, 42
RCW 59.30.010(2) 51
RCW 59.30.030(13) 43
RCW 59.30.030(2) 42
RCW 59.30.040 (10) 12
RCW 59.30.040 (10)(c) 14, 49
RCW 59.30.040(1)-(2) 51
RCW 59.30.040(9) 42
RCW 59.320.030(14) 20
RCW Ch. 59.18 26
RCW Ch. 59.20 ..... 2, 18, 22
RCW Ch.59.30 ..... 2, 18
WAC 296-1501-0310 40
WAC 296-150I-0310 40
WAC 365-210-030 40

OTHER AUTHORITIES

Federal Government. 42 U.S.C. sec. 5401 et seq. & 24 CFR 3282 et seq.. 40
Rory O'Sullivan & Gabe Medrash, *Creating Workable Protections for Manufactured Home Owners: Evictions, Foreclosures, and the Homestead*, 49 Gonz. L. Rev. 285, 290 (2014) 39

RULES

RAP 10.4(b) 13
RAP 18.1 ..... 3, 54

I. INTRODUCTION

The State of Washington established several sets of landlord tenant law, each intended for distinct sets of uses. Mobile home parks accept tenant-owned structures that are not readily movable, such as mobile homes and park model homes that are intended for permanent or semi-permanent installation. This distinct use underpins the various requirements imposed on mobile home landlords. Here, the State errs when it seeks to force application of mobile home laws on Dan & Bill's RV Park use, which does not cater to mobile homes or park models. The matter comes to Court for review of a final Attorney General Office Mobile Home Dispute Resolution Program Order rendered by the Washington State Office of Administrative Hearings Administrative Law Judge Terry Shuh, which, after a two-day trial, found the Mobile Home Landlord Tenant Act does not apply to Dan and Bill's RV Park, and dismissed a Notice of Violation and Order that the Mobile Home Program purported to issue against RV Park resulting from a complaint by now-deceased tenant Ms. Allen. On appeal by Ms. Allen (and, curiously, the Attorney General's office, which purports to appeal its own final order), the Superior Court overturned the ALJ's ruling. The RV Park now appeals under Washington State's Administrative Procedure Act, RCW 34.05, for reinstatement of the ALJ Order.

This Court is charged with deferential review of the findings of the ALJ below, and to construe all findings and inferences in favor of RV Park. The order below will show that RV Park is not subject to the Mobile Home Landlord Tenant Act ("MHLTA"), because it does not meet the definitions of a mobile/manufactured housing community set forth in RCW Ch. 59.20 & RCW Ch.59.30. The lynchpin definition – what constitutes a Park Model, turns on whether or not the trailer was designed for permanent or semi-permanent installation. The ALJ found that the RVs are not so intended, and this is supported by the express testimony of every non-party single witness. Witnesses categorically testified that they do not live in park models, and that they do not intend to install permanently or semi-permanently to RV Park. Plugging these simple findings supported by substantial evidence into the MHLTA definitions results in reinstatement of the ALJ Order.

This Court should reject the dozens of pages of statutory contortions that Ms. Allen and the Mobile Home Program have submitted in in furtherance of avoiding the simple truth of this matter: RV Park is an RV Park and not a mobile home park. On appeal this Court is asked to find again that RVs in running condition parked at non-allotted campsites and connected through campsite-type temporary garden hoses, waste flex hoses and extension cords are not permanently or semi-permanently

installed, and, therefore, not "park model" homes that transform RV Park into a Mobile Home Park.

Legally and factually, RV Park is obviously an RV Park and not a mobile home park, as borne out by a number of independent legal determinations that agreed on this essential point. The record shows that Pierce County, RV Park itself, the Pierce County Superior Court (AR 177), the Administrative Law Judge that rendered the Attorney General's final agency order (AR 855-6) in this case, all agree that RV Park is just that, an RV Park, and not a mobile home park.

Further, the express, legislatively-codified, policy of the MHLTA is not served by imposing its burdens on non-mobile home parks that offer campsites to RVs. MHLTA exists so that vulnerable individuals do not lose their investments in mobile homes, which cost thousands of dollars and require much advance planning to move, and cannot generally be moved on short notice. This policy flatly does not apply to RVs. Each witness testified here that they can leave RV Park in a matter of minutes by simply unplugging and driving off, and maintain a state of readiness to do so. RV Park respectfully requests the Court reinstate the final administrative Order, and award RV Park the maximum amount under RAP 18.1 and Washington State's Equal Access to Justice Act.

II. RESTATEMENT OF ISSUES

1. Whether this Court should affirm the ALJ's eighteen-page, final administrative order.
    a. Are the sixty-four findings of fact that went unchallenged on appeal to the Superior Court verities on appeal under the Washington State's APA and this Court's recent ruling in *Narrows Real Estate, Inc. v. Mdhr,* Cause 47766-1?
    b. Are the six findings of fact to which the Petitioner assigned error supported by sufficient evidence to withstand this Court's deferential review?
    c. Are all findings of fact supported by sufficient evidence to withstand this Court's deferential review?
    d. Is the ALJ Order harmonious with several Pierce County administrative determinations, and also an independent Pierce County Superior Court case where the same issue in this case was briefed, litigated, and ruled upon with finality?
2. Whether a state administrative agency has standing to appeal its own final administrative order, even if the agency decision-making has been delegated to a hearings officer.
    a. Does the Attorney General have a duty to defend its own, administrative state order?
    b. Do RV Park's due process rights continue to be violated by RV Park having to defend the Attorney General's own order against the Attorney General?
3. Even RCW Ch. 59.30 applied, whether RCW 59.30 authorizes unwarranted searches.
    a. Does a blanket authorization to conduct investigations excuse the need for search warrants?
    b. Do the facts here excuse the need for search warrants?
4. The Superior Court erred in awarding attorney's fees to Complainant Ms. Allen in an amount of $41,655.
    a. Should a complainant under RCW § 59.30.040 receive an award of attorney's fees when RCW 59.30.040 states "the respondent and complainant shall each bear the cost of his or her own legal expenses"
    b. Whether under Washington State's Equal Access to Justice Act, a petitioner who receives relief from a state agency administrative order be entitled to an award of against the state agency or the administrative respondent.
    c. Whether an award of $41,655 is reasonable, generally or where, as here, the legislature has capped fee awards for

parties who prevail against an administrative agency at $20,000.

III. RESTATEMENT OF RECORD

A. Mobile Home Landlord Tenant Act, Generally RV's Park Operation

The RV Park has operated since the 1970s in Pierce County, Washington. *Haugsness Testimony* Tr. 336:13. AR 1208. RV Park fronts the Puyallup River, is surrounded by a perimeter fence on three other sides, and labelled as private property by a prominent sign at its gate. Finding 4.9, AR 859; *Picture* AR 406 & *Testimony of Haugsness*. AR 1208.

The RV Park contains zero mobile homes, zero manufactured homes, and, at the time of the Order on appeal, just one park model recreational vehicle[1]. Conclusion 5.14 AR 867. *Accord State Br.* 18 ("Finally, the parties do not dispute that Dan & Bill's contains no mobile homes or manufactured homes").

The RV Park contains a number of motorhomes, fifth wheels, and travel trailer recreational vehicles. Each RV in the RV Park has a number.

[1] The RV Park currently has zero park models on site. Around the time complainant Ms. Allen died in July of 2017, her family attended the RV Park twice to collect possessions and also strip the trailer of its useful fixtures, such as heat, hot water, doors, and refrigeration. In addition to being stripped, it also came to the RV Park's attention that Ms. Allen's park model has mold and water intrusion issues that render it unfit for human habitation. Ms. Allen's estate requested RV Park dispose of Allen's park model.

The purpose of the numbers is so that the RV Park knows where its residents are and for facilitating delivery of the mail. No one rents a specific lot. FF 4.8 AR 858. None of the units in the Park are hardwired for electricity or plumbed for septic and water. AR 859. All of the electrical connections are by plug-in and all water and septic are connected like a garden hose is connected to a faucet. All of the hook-ups are basically the same. *Id*. All of the hook-ups resemble those used in campgrounds and parks, *Haugsness Testimony* AR 1223-4 & *Brodernick Testimony* AR 1085. Electrical amperage mostly limited to thirty amps, which is not sufficient to support a park model RV. FF 4.18 AR 859. The Park requires all residents to be ready to move anytime. FF 4.11 AR 859. RV Park proprietor Daniel Haugsness lives in a motorhome located in RV Park, and did so at all time relevant to this case. *Haugsness Testimony* 389.

B. Pierce County's circa-2009 Pronouncement that RV Park is an RV Park and not a Mobile Home Park.

Pierce County Planning and Land Services sought to enforce against RV Park for operating an "RV Park", and not a mobile home park. In 2009, the Pierce County District Court ruled that RV Park is private property, and that Pierce County violated Haugnsess' rights under Art. I, S.7 of the Washington Constitution by using a Washington State Patrol

airplane to overfly RV Park to attempt to gain evidence for that code enforcement case. AR 150.

C. Pierce County Superior Court's 2010 Pronouncement that MHLTA does not apply to RV Park.

In 2010, the Pierce County Superior Court ruled that RV Park is not a mobile home park subject to the MHLTA, when presented the exact same arguments that Mobile Home Program Made here. *Haugsness v. Gillespie*, Pleadings AR 156-79. In other words, the precise issue here has been actually litigated and ruled upon with finality. In that *Gillespie* case, and eviction defendant made substantially the same argument that Ms. Allen and the Mobile Home NOV made here – that recreational vehicles "transform" into mobile home lots because people reside at RV Park for a long time and have adornments around the RVs. The Pierce County Superior Court rejected that argument.

D. Complainant Allen's Tenure at RV Park.

Until January of 2014, Ms. Allen was homeless. *Allen Testimony* Tr. 89:19 AR 961. Ms. Allen described drifting between living in parking lots and her son's couch. *Id.* & Tr. 94:10-15 AR 966. Ms. Allen's son rented a space at the RV Park. *Id.* The RV Park's proprietor, Daniel Haugsness, graciously rescued Ms. Allen from her predicament by arranging with Ms. Allen's son for RV Park to extend Ms. Allen an

invitation to live in a trailer that had been left behind at RV Park. *Allen Testimony*. Tr. 89:20-21 AR 961 & Tr. 94:15-17 AR 966. Mr. Haugsness and Ms. Allen determined that once Ms. Allen's address stabilized, Ms. Allen could sign up for government benefits, and then Ms. Allen would begin paying rent as Ms. Allen could afford to do so. *Allen Testimony* Tr. 97-98 AR 969-70. Ms. Allen moved into RV Park in January of 2014, and, shortly thereafter, began receiving social security benefits and paying rent. *Id*. In short, RV Park's gracious support upgraded Ms. Allen from transient, homeless, and penniless to sheltered with income.

E. Allen Complaint to Mobile Home Dispute Resolution Program.

In the Spring of 2014, Mr. Haugsness informed Ms. Allen that rentals for monthly occupants would be increased by just $20, from $460 to $480 per month, all inclusive. Ms. Allen reacted to this modest change by complaining to the Attorney General Office's Mobile Home Dispute Resolution Program that RV Park did not provide ninety days of a $20 rent increase, and that RV Park did not offer Ms. Allen a one year lease. *Complaint*. AR 16-18.

The Mobile Home Program informed the RV Park that it would open an investigation. *Frame Letter*. AR 187-88. RV Park's legal counsel promptly informed Mobile Home Program that MHLTA did not

apply to RV Park, and not to contact RV Park staff directly. *Goodstein Letter*. AR 183-185.

Over a period beginning in July, 2014, Mobile Home Program undertook numerous warrantless searches, sending investigators to the RV Park, including AR 194 (July 24, 2014 site visit), AR 194 (September 5, 2014 site visit), AR 195 (November 4, 2015 [sic: 2014?] site visit). These Attorney General agents directly communicated with RV Park's owner without the RV Park's counsel present.

Throughout 2014 and 2015, these visits were more specifically for the purpose of taking "photographs of the tenants [sic] homes". *Dec'l Crummer*. AR 247. The Mobile Home Program also neglected to file petitions to enforce subpoenas for resident testimony, as required by statute. At hearing on September 28, 2015, Mobile Home Program chose to "enforce" subpoenas for RV Park residents to telephonically testify by sending AG staff to RV Park while its proprietor and attorney were present at the trial. These unwelcome Attorney General employees entered the curtilage of RV Park resident homes without permission and trust cell phones at park residents. *Broderick Testimony*. TR. 202-226. The ALJ therefore had the opportunity to witness firsthand the trespass and as it unfolded. This incident is recorded on the OAH hearing Transcript at AR 1094-1117.

On November 17, 2014, Mobile Home Program issued a notice of violation to the RV Park, concerning the rent increase, the term of Ms. Allen's lease. AR 7-11. The NOV added issues that were outside the scope of Ms. Allen's Complaint – such as RV Park's alleged failure to register with the Department of Revenue as a Mobile Home Park, and RV Park's alleged compliance with Pierce County zoning code (based upon the 2009 matter, which was dismissed in a court of law, AR 150). *Notice of Violation*. AR 10-11. The Attorney General has apparently abandoned this non-complained issues on appeal.

Responsive to the NOV, the RV Park promptly requested public records related to this enforcement case. The Mobile Home Program chose not to provide[2] any of the records.

Despite being denied the public records, RV Park appealed the NOV. AR 3-6. The Attorney General has delegated review of its notices of violation to the Washington State Office of Administrative Hearings (OAH), which, through an administrative law judge ("ALJ"), renders the final administrative order of the Attorney General. RCW 59.30.040. The Mobile Home Program convened an administrative hearing, which the OAH assigned case number 2014-AGO-0001. AR22.

[2] RV Park sought judicial review of Attorney General's response under the Public Records Act, won summary judgment, and then settled the claim for $75,000. *Haugsness v. State* (King County Super Ct. 15-2-15446-5 SEA) AR 46.

Eventually, the OAH held a two-day trial. Tr. AR 873 & 1122. Six RV Park residents testified. *Order* ¶ 3.1 AR 856. At that trial, each and every witness, including Complainant Ms. Allen, testified that their RV is not permanently or semi-permanently installed at RV Park. All non-party witnesses also expressly testified that they do not live in a park model RV. FF 4.30 (Resident Hamrick lives in an RV that is licensed, can and does relocate inside and outside the park, can be on the road in two hours or less); FF 4.35 & 4.38 (Resident Niquette lives an RV that is not permanently installed and can be on the road in minutes); FF 4.42 (Resident Shinkle lives in a recreational vehicle that can be on the road in one or two hours; Skinkle parked and moved into a different trailer just days before hearing); FF 4.47, 4.49, 4.51, 4.53 (Resident Brodernick lives in a mobile home that he regularly takes on vacations and is not permanently installed); FF 4.55, 4.58 (Resident Dewey lives in a motor home that he does not plan to permanently install, and can be on the road in fifteen minutes). Complainant Ms. Allen, herself, did not intend to be permanently installed at RV Park. Ms. Allen described that she had been actively applying to move her trailer elsewhere, but, due to its poor condition, no one would accept her. FF 4.23.

On November 9, 2015, ALJ Terry Shuh rendered an Order that was the "final administrative order of the Attorney General's office" in

this matter that dismissed the case because RV Park is not a mobile home park. AR 855-72. Per statute, the ALJ Order was the final administrative order of the Attorney General. RCW 59.30.040 (10).

F. Appeal to Superior Court

Shortly after, Ms. Allen retained private counsel and filed a petition for review of the ALJ Order in the Thurston County Superior Court. Ms. Allen's counsel chose only to designate six findings of fact for review, leaving alone the vast majority (sixty four unchallenged findings) of the ALJ Order. Those assignments were contained in the Opening Brief and not the Petition. *Allen Br. to Super Ct.* 5-6. CP 41-2.

Curiously, the AG Mobile Home Program chose to seek review of its own final order - instead of defending the Order – essentially suing itself. The Attorney General failed take issue or finding of fact, at all, for review, either here or in the Superior Court. Therefore, sixty-four findings of fact remained unchallenged. The Mobile Home Program abandoned its outside-the-complaint issues pertaining to Pierce County Code Compliance and Department of Revenue Registration at this stage.

The Thurston County Superior Court consolidated the appeals, but neglected to serve a copy of the case schedule to RV Park. *Order*

Consolidating CP 30-31. *Return on Service.* CP__.[3] This Superior Court omission prevented RV Park from being able to timely move for summary dismissal of the AG appeal in the consolidated case before the Superior Court, without causing a protracted delay in the case, which no one desired.

Next, the Thurston County Superior Court granted the Northwest Justice Project's motion to file an Amicus Brief, over RV Park's objection. CP 34-36. Northwest Justice Project filed a 23-page "Amicus Brief", and also filed additional declaration testimony. RV Park objected to the Northwest Justice Project filing on the basis that the so-called amicus brief greatly exceeded the page limits provided in RAP 10.4(b), and was also longer than the Parties' principal briefs. CP 151-153. RV Park also pointed out that the Superior Court's administrative review jurisdiction prohibits the new testimony that Northwest Justice Project introduced to support its document. *Id.* The Superior Court denied RV Park's motion to strike, and stated that the Court found the new "evidence" on appeal "helpful". Tr. of Motion to Strike 7:3.

The parties presented arguments to the superior court. The Superior Court ruled to overturn the ALJ. CP 154-160. The Superior

[3] RV Park will concurrently file a supplemental designation of record, so that the described document will join the record on review here.

Court order cited to the Northwest Justice Project's new "evidence" as partial basis for overturning the ALJ. *Id*.

The Superior Court ruled to award attorney's fees to Ms. Allen's private counsel, at the expense of RV Park. RV Park pointed out to the Superior Court that, per RCW 59.30.040, "If an administrative hearing is initiated, the respondent and complainant shall each bear the cost of his or her own legal expenses", and that per RCW 4.84.340, fees are assessed against the agency whose action is overturned. Despite this, the Thurston County Superior Court assessed attorney's fees in the amount of more than $41,000 against RV Park.

RV Park appeals from the Superior Court's Order overturning the ALJ and the Orders awarding fees and judgment.

IV. STANDARD OF REVIEW & BURDEN

The Washington Administrative Procedures Act (APA) governs the standard of review. RCW 59.30.040 (10)(c), RCW 34.05.570. *Tapper v. Employment Sec. Dep't*, 122 Wn.2d 397, 402, 858 P.2d 494 (1993). This Court sits in the same position as the trial court and thus applies the APA standard of review directly to the record before the agency. *Trapper*, 122 Wn.2d at 402.

In an appeal from an administrative decision, this Court reviews the agencies' legal conclusions *de novo*, including whether findings of fact

support conclusions of law, whether the law was applied correctly, and whether a decision was arbitrary or capricious. *Hickethier v. Washington State Dept. of Licensing*, 159 Wn. App. 203, 244 P.3d 1010 (2011).

Under the APA, the party challenging an agency action has the burden of demonstrating the action is invalid and must show substantial prejudice. RCW 34.05.570(1)(a), (d). A reviewing court may reverse an administrative order if the order violates the constitution, exceeds statutory authority, or involves an error in interpreting or applying the law. RCW 34.05.570(3)(a)-(b), (d).

"We sit in the same position as the superior court and apply the APA to the administrative record." *Cornelius v. Dep't of Ecology*, 182 Wn.2d 574, 585, 344 P.3d 199 (2015). We review questions of law, and the agency's application of the law to the facts, de novo, but we afford "great weight" to the agency's interpretation of law "where the statute is within the agency's special expertise." Id. at 585. Where the agency makes a finding that goes unchallenged, that finding becomes a verity on appeal. *Darkenwald v. Emp't Sec. Dep't*, 183 Wn.2d 237, 244, 350 P.3d 647 (2015). Where, as here, the rulings were made on summary judgment, we review those rulings de novo. *Cornelius*, 182 Wn.2d at 585.

"[R]eview is deferential". *Schofield v. Spokane Cty.*, 96 Wn. App. 581, 586, 980 P.2d 277, 280 (1999). Evidence will be viewed in the light

most favorable to "the party who prevailed in the highest forum that exercised fact finding authority, a process that necessarily entails acceptance of the factfinder's views regarding the credibility of witnesses and the weight to be given reasonable but competing inferences." *City of Univ. Place v. McGuire*, 144 Wn.2d 640, 652-53, 30 P.3d 453, 459 (2001); citing *State ex rel. Lige & Wm. B. Dickson Co. v. County of Pierce*, 65 Wn. App. 614, 618, 829 P.2d 217 (1992). "Our deferential review requires us to ask only whether substantial evidence in the record supports the hearing examiner's factual determinations". *Citizens to Preserve Pioneer Park, L.L.C. v. City of Mercer Island*, 106 Wn. App. 461, 473-74, 24 P.3d 1079 (Div. 1, 2001). "We will not substitute our judgment for that of the agency regarding witness credibility or the weight of evidence". *Callecod*, 84 Wn. App. at 676 n.9.

Findings of Fact are reviewed for substantial evidence in light of the whole record. RCW 34.05.570(3)(e). Substantial evidence is evidence that is sufficient to persuade a fair minded person of the truth or correctness of the matter. *King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 142 Wn.2d 543, 553, 14 P.3d 133 (2000). Factual findings labelled as conclusion of law will nevertheless be reviewed as factual findings. *State v. Ross*, 141 Wn.2d 304, 309, 4 P.3d 130 (2000); *citing Willener v. Sweeting*, 107 Wn.2d 388, 394, 730 P.2d 45 (1986).

Ms. Allen bears the burden of proving that the Mobile Home Dispute Resolution Program erred. RCW 34.05.570(1)(a); *City of Redmond v. Central Puget Sound Growth Mgmt. Hearings Board*, 136 Wn.2d 38, 45, 959 P.2d 1091 (1998); *Hillis v. Dep't of Ecology*, 131 Wn.2d 373, 381, 932 P.2d 139 (1997). If this Court considers the appeal from Attorney General's Office, which has filed an appeal of its own final order, then the Attorney General's Office also bears the burden to show that it erred.

V. RV PARK BRIEF

On appeal, this Court is asked to find again that Recreational Vehicles in running condition parked at non-allotted campsites and connected through temporary garden hoses, flex hoses, and extension cords, are not permanently or semi-permanently installed, and, therefore, not "park model" homes that transform the RV Park into a Mobile Home Park.

A. The Court Should Affirm that Complainant Ms. Allen is not a Mobile Home Tenant

The substantive issue in this case turned on whether or not the RV Park, intended for temporary and moveable RV Park uses can be lawfully elevated to the restrictions and requirements including the provisions of

RCW Ch. 59.20[4], the Mobile Home Landlord Tenant Act. "[T]he MHLTA regulates and determines the legal rights, remedies, and obligations arising from a rental agreement between a mobile home lot tenant and a mobile home park landlord." *Holiday Resort Cmty. Ass'n v. Echo Lake Assocs., LLC*, 134 Wn..App. 210, 222, 135 P.3d 499 (2006), *review denied*, 160 Wn..2d 1019, 163 P.3d 793 (2007). In Order for MHLTA to apply, there must be (1) mobile home lots, and (2) a mobile home park landlord. In turn, a prerequisite number (two) of mobile homes, manufactured homes, or park model homes must be present on the real property to bring an operation within the purview of MHLTA. The findings of fact and evidence below show that RV Park only contains fifth wheel recreational vehicles, travel trailer recreational vehicles, motorhome recreational vehicles, and a single park model home. Therefore, MHLTA, RCW Ch. 59.20, does not apply here, and the ALJ ruling should be affirmed.

1. Mobile Home Lot

A "tenant" as defined by the MHLTA (RCW 59.20.030(18)), "means any person, except a transient, who rents a mobile home lot". "Mobile home lot" means a portion of a mobile home park or manufactured housing community designated as the location of one

[4] RCW Ch. 59.30, the Mobile Home Program's authorizing statute, provides definitions redundant to those in RCW Ch. 59.20.

mobile home, manufactured home, or park model and its accessory buildings, and intended for the exclusive use as a primary residence by the occupants of that mobile home, manufactured home, or park model. RCW 59.20.030(9).

2. Mobile Home Park.

RV Park is not a mobile home park. A mobile home park is:

> (10) "Mobile home park," "manufactured housing community," or "manufactured/mobile home community" means any real property which is rented or held out for rent to others for the placement of two or more mobile homes, manufactured homes, or park models for the primary purpose of production of income, except where such real property is rented or held out for rent for seasonal recreational purpose only and is not intended for year-round occupancy;

"And" denotes that each element must be met. RV Park is not rented, nor held out for rent to others for the placement of two or more park models. The MHLTA looks to the intent of the landlord and not the occupant – only a landlord may "hold out" his or her premises for a particular purpose. Here, the ALJ found that RV Park does not hold out the Premises for year round occupancy.

It is undisputed that there are no manufactured or mobile homes in RV Park. The petitioners assert that there are two or more park models. "Park model" means a recreational vehicle intended for permanent or semi-permanent installation and is used as a primary residence. RCW

59.20.030. Here, the ALJ found that RV Park lacks the requisite gather of park models. This finding is supported by substantial evidence - all park resident witnesses, except Ms. Allen[5], testified that they do not live in park models. Each of the testifying witnesses also were able to articulate what is a park model.

3. Park Model.

"Park model" means a recreational vehicle intended for permanent or semi-permanent installation and is used as a primary residence. RCW 59.320.030(14). Increasingly, park models are referred to as "tiny houses". This Court stated "Park model RVs are manufactured dwellings designed to be towed to sites such as mobile home parks to serve as full or part-time residences. Unlike other RVs, they lack self-contained holding tanks and require a sewer connection or external method of waste disposal." *Brotherton v. Jefferson Cty*., 160 Wn. App. 699, 701 n.1, 249 P.3d 666 (Div. 2, 2011) (overruled on other grounds). The *Bortherton* definition closely tracks what witnesses articulated to be a park model in the testimony at this hearing.

[5] Ms. Allen lived in an exceptionally stripped down park model. RV Park concedes that Ms. Allen's trailer is a park model. The Allen trailer displays the ANSI park model sticker described at RCW… The Allen trailer lakes holdings tanks. *See Brotherton v. Jefferson County*. At hearing, RV Park's proprietor testified that the Allen RV regularly burned out electrical plugs. This is consistent with someone tampering with the park model's higher amperage electrical system in order to plug into a standard RV hookup offered by RV Park.

Washington State's legislature recognizes that Park Model RVs, as defined in RCW 59.20 also require building permits to install, due to their unique design, higher amperage electrical use, and need for more permanent sewer connection. RCW § 36.01.220[6], 35.21.897. A park model can also become real property for taxation purposes if it is placed on a foundation. RCW § 82.50.530. A travel trailer recreational vehicle can never become real property. *Id*.

The record here shows that as compared to a normal RV, the park model RV lacks generators, holding tanks, runs on different electrical current and amperage, is larger, has household-type appliances, and is more sturdily built to its own, federal, engineering standard. AR 466. Park models are generally transported once or twice per year and used as

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[6] RCW 36.01.220
Mobile home, manufactured home, or park model moving or installing—Copies of permits—Definitions.
(1) A county shall transmit a copy of any permit issued to a tenant or the tenant's agent for a mobile home, manufactured home, or park model installation in a mobile home park to the landlord.
(2) A county shall transmit a copy of any permit issued to a person engaged in the business of moving or installing a mobile home, manufactured home, or park model in a mobile home park to the tenant and the landlord.
(3) As used in this section:
(a) "Landlord" has the same meaning as in RCW 59.20.030;
(b) "Mobile home park" has the same meaning as in RCW 59.20.030;
(c) "Mobile or manufactured home installation" has the same meaning as in *RCW 43.63B.010; and
(d) "Tenant" has the same meaning as in RCW 59.20.030.

vacation or guest homes. AR 466. It follows that building permits are required to install park models. RCW § 36.01.220[7], 35.21.897.

Because RV Park lacks the requisite gather of park models, mobile homes, and manufactured homes, RV Park is not subject to RCW Ch. 59.20, the Mobile Home Landlord Tenant Act ("MHLTA"). The record contains authenticated pictures of park models, Tr. Ex. O, AR 510-511, *Haugness Testimony* AR 1218-21, which can be compared to authenticated recreational vehicles. Exhibit attached.

4. Recreational Vehicle.

RV Park residents predominantly reside in recreational vehicles. FF 4.12. Recreational vehicle "means a travel trailer, motor home, truck camper, or camping trailer that is primarily designed and used as temporary living quarters, is either self-propelled or mounted on or drawn by another vehicle, is transient, is not occupied as a primary residence, and

[7] RCW 36.01.220
Mobile home, manufactured home, or park model moving or installing—Copies of permits—Definitions.
(1) A county shall transmit a copy of any permit issued to a tenant or the tenant's agent for a mobile home, manufactured home, or park model installation in a mobile home park to the landlord.
(2) A county shall transmit a copy of any permit issued to a person engaged in the business of moving or installing a mobile home, manufactured home, or park model in a mobile home park to the tenant and the landlord.
(3) As used in this section:
(a) "Landlord" has the same meaning as in RCW 59.20.030;
(b) "Mobile home park" has the same meaning as in RCW 59.20.030;
(c) "Mobile or manufactured home installation" has the same meaning as in *RCW 43.63B.010; and
(d) "Tenant" has the same meaning as in RCW 59.20.030.

is not immobilized or permanently affixed to a mobile home lot". RCW 59.20.030(17).

The MHLTA also specifies that there is a difference in RVs defined above and "RVs occupied as a primary residence". RCW 59.20.080(3). "(3) Chapters 59.12 and 59.18 RCW govern the eviction of recreational vehicles, as defined in RCW 59.20.030, from mobile home parks. This chapter governs the eviction of mobile homes, manufactured homes, park models, and recreational vehicles used as a primary residence from a mobile home park".

B. Timing of Challenges to the OAH's Findings of Fact

This Court's recent decision *In re Narrows Real Estate, Inc. v. MHDRP, Consumer Protection Division, Attorney General* __ Wn.App.__, __P.3d__ (Div. 2, 2017 No. 47766-1-II), concerning the Mobile Home Program, establishes here that Petitioners cannot overcome the standard of review. Non-party witnesses categorically and expressly testified that they do not live in park models, and that their RVs are not installed with even semi-permanence to RV Park. RV Park campers testified and the ALJ found that RV Park campers hook up to services in the manner identical to a campground or state park. AR 859. RV Park residents expressly testified that they do not live in park models, and the RV park tenants expressly stated that they are not "immobilized" nor

"permanently" or "semi-permanently installed", nor do they want to be. See, i.e. AR 157 ("not permanent), AR 173 (Absolutely not"), AR 214 ("Oh gosh, no"). The ALJ's finding that the recreational vehicles are not semi-permanently or permanently installed is supported by substantial evidence to which this Court can also defer and affirm the ALJ's Order.

Mobile Home Program neglected to designate *any* findings of fact on appeal, whatsoever. Ms. Allen only designated six finding of fact for appeal – leaving intact all sixty-four other labelled other findings of fact, and all findings of fact labelled as conclusions of law - from which the OAH legal conclusions result. *Allen Br. to Super Ct.* CP 41-2. Ms. Allen's six assignments of error and analysis of those assignments take up just one page. RV Park expressly argued to the trial court that the significant omissions by Ms. Allen and Mobile Home Program defeated the appeal.

On July 25, 2017, this Court published another case involving Mobile Home Program. *In re Narrows Real Estate, Inc.* ___Wn.App.__ (Div. 2, 2017 No. 47766-1-II). This Court found that findings of fact not challenged in a Petition to the Superior Court are verities on appeal. *Id. Slip. Op.* 8. Here, like in *Narrows*, as an initial matter, RV Park contends that the findings Mobile Home Program and Allen collectively did not challenge in their appeal to the Superior Court (or this Court) are now

verities on appeal to this Court. In its Petitioner's Brief to the Superior Court and here, Ms. Allen only designated six findings of fact for review. CP 42-2. Ms. Allen provided no follow-up analysis or argument in briefing of how the six findings of fact designated for review are erroneous. *See Generally, Allen Br. to Super Ct.* CP 37-80. Therefore, all findings of fact are verities on appeal. *Narrows,* (Div. 2, 2017 No. 47766-1-II; Slip. Op. 8.); *citing Cowiche Canyon Conservancy v. Bosley,* 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (holding that where claimed errors are not supported by argument, the assignments of error are waived). The result here should be no different than in *Narrows*. The vast majority of the ALJ's opinion is therefore a verity on appeal and the Order should be affirmed when this Court applies unchallenged findings of fact to the law. RV Park provides an annotated Final Order, which notes findings of fact that Allen challenged – but did not analyze. Even if the Court subtracts the meekly "challenged" findings of fact, there are still ample grounds to affirm based upon the large number of verities on appeal.

C. The OAH decision was not arbitrary and capricious.

Ms. Allen cannot meet her "heavy" burden to show that the OAH decision was arbitrary and capricious. *Pierce Cty. Sheriff v. Civil Serv. Com*, 98 Wn.2d 690, 695, 658 P.2d 648 (1983). "Arbitrary and capricious action has been defined as willful and unreasoning action, without

consideration and in disregard of facts and circumstances. Where there is room for two opinions, action is not arbitrary and capricious even though one may believe an erroneous conclusion has been reached". *Id.*; *quoting State v. Rowe*, 93 Wn.2d 277, 284, 609 P.2d 1348 (1980). Both Pierce County and the Pierce County Superior Court have determined RV Park not to be a mobile home community, and, specifically, not governed by MHLTA. The OAH action to independently arrive at the same result was not arbitrary and capricious.

D. OAH Ruling Consistent with independent Pierce County Superior Court Order Establishes Room for Two Opinions

The lack of applicability of the MHLTA to RV Park has been briefed, litigated, and ruled upon with finality in the Pierce County Superior Court. In 2010, RV Park filed an unlawful detainer action against a former tenant, Mr. Gilespie. RV Park filed the special summons provided by the Residential Landlord Tenant Act (RLTA), RCW Ch. 59.18. Mr. Gilespie retained a private attorney to defend himself. The former tenant's attorney asserted that the Court lacked jurisdiction under the RLTA to evict, because RV Park was allegedly a mobile home community. In support of the former tenant's argument, the former tenant made the identical argument that Mobile Home Program, and now, Ms. Allen, make.

Here, the NOV alleges:

> 2.3 Tenants live in the park year round. Tenant S.S. has lived in the park for 12 years; tenants E.H. and B.H. have lived in the park for 11 years; tenant E.S. has lived in the park for 4 years; and tenant T.R. has lived in the park for approximately 3 years.
>
> 2.4 Tenants' homes are sitting on top of concrete blocks.
>
> 3.1 RCW 59.20.030(10) defines "Mobile home park," "manufactured housing community," or "manufactured/mobile home community" as:
> [A]ny real property which is rented or held out for rent to others for the placement of two or more mobile homes, or park models for the primary purpose of production of income, except where such real property is rented or held out for rent for seasonal recreational purpose only and is not intended for year-round occupancy.
>
> a. RCW 59.20.030(14) defines a "park model" as:
> [A] recreational vehicle intended for permanent or semi-permanent installation and is used as a primary residence.
> b. RCW 59.20.030(17) defines a "recreational vehicle" as:
> [A] travel trailer, motor home, truck camper, or camping trailer that is primarily designed and used as temporary living quarters, is either self-propelled or mounted on or drawn by another vehicle, is transient, is not occupied as a primary residence, and is not immobilized or permanently affixed to a mobile home lot.
> c. The homes in Dan & Bill's are park models, rather than recreational vehicles: they are semi-permanently installed and have been used as primary residences by tenants for numerous years. **Dan & Bill's is a mobile home park pursuant to RCW 59.20.030(10).**

NOV 3. Emphasis provided for comparison to the Case *Haugsness v. Gillespie*, 10-2-13592-3 (Pierce Cnty Super Ct.) that involved an identical issue.

In that case, Mr. Haugsness sued a tenant for unlawful detainer under the RLTA. *Compl.* AR 156-8. Eviction procedures under the RLTA are different than eviction procedures under the MHLTA. The Tenant, Mr. Gillespie, claimed entitlement to MHLTA eviction procedures and moved to dismiss the eviction. AR 162-3. Mr. Gilespie and the AGO cite to the same RCWs for the same purpose. Gilespie unsuccessfully argued:

> Plaintiff brought an action under RCW 59.18 [the RLTA] when the rental lot is being provided for a park model under RCW 59.20 030(14) which requires compliance with RCW 59.20 that Manufactured/Mobile Home Landlord Tenant Act. Plaintiff failed to comply with the RCW 59.20 the manufactured/mobile home landlord tenant act and this is jurisdictional because strict compliance with landlord tenant laws are mandatory providing for the proper remedy of dismissal and an award of attorney fees. RCW 59.20.110.
>
> In this case [Mr] Gilispie resided in the Plaintiff's park [Dan and Bill's RV Park] since spring of 2006. He placed his trailer at the assigned location, **blocked**, balanced, leveled and skirted the unit. He has not moved the trailer since. He cannot move the trailer and had no plans to move the trailer because he cannot. **This is his home and has been year in year out for over four years.** He has exclusive rights to areas he rents from Plaintiff.
>
> The Court does not need to decide whether the trailer park should be called an RV park or mobile home park. The law does not interfere with what an owner can or cannot permit on their land, but the law does specifically protect persons who reside on these lots under RCW 59.20.
> **The Court needs to look at the facts presented and make a determination under RCW 59.20.030.**

> "Recreational vehicle" means a travel trailer primarily…primarily designed and used as a temporary living quarter…is transient, is not occupied as a primary residence, and is not immobilized or permanently affixed to a mobile home lot, RCW 59.20.030(17).
>
> "Park model" means a recreational vehicle intended for permanent or semi-permanent installation and is used as a primary residence. RCW 59.20.030(14).
>
> "Mobile home lot" … a portion of a mobile home park…intended for the exclusive use as a primary residence by the occupants of that park model. RCW 59.20.030(9).
>
> Whether or not Plaintiff intended to create tenant rights provided for by law to this tenant is not the question. **The question here is if a landlord who allows trailers to be blocked and occupied for years at a time changes the rules regarding notice and eviction.** In this case it clearly does. The unit is not recreational, but is used for a permanent home, and as in this situation, a home for the poor who needs the protection the law provides.

Gillespie's Memorandum in Support of Judgment and Order of Dismissal 1-2. AR 162-3**.** Emphasized. In Response, Mr. Haugsness highlighted the absurdity of Gillespie's (and now the AGO's) argument, and the failure to comprehend the plain text of the MHLTA:

> Defendant argues that his travel trailer is a "park model" subject to [MHLTA] because he uses it as a primary residence, and therefore the Court lacks jurisdiction under the [RLTA] to evict him…This case is expressly excluded from the [MHLTA], RCW 59.20.040, which is <u>only</u> applicable to rental of "a mobile home lot and including specified amenities within the mobile home park, mobile home park cooperative, or mobile home park subdivision". The property in this case is an RV Park, which is specifically excluded from Chapter 59.20.
> ….
> There are not mobile home lots in Dan and Bill's RV Park. The [MHLTA] is <u>only</u> applicable to rental of "a mobile home lot."

> RCW 59.20.040. Mobile home lots are defined as "designated lots intended for the exclusive use as a primary residence." RCW 59.20.030 (9). Dan and Bill's RV Park is permitted as an RV Park and is not intended for year round residency. None of the areas on the property are "exclusive" to any of the campers.
>
> As testified by Plaintiff and Defendant under oath, the park has no "permanent" sites, provides power to campers by extension chords, water by water hoses and only provides septic hookups by detachable tank pumps. Under the park rules, campers are expected to pay on an month to month basis, must keep their RVs in working order at all times, able to be moved to alternate sites within the RV Park. This is particularly important as the Park is located in an area subject to flooding and many campsites are flooded on a regular basis.
> ….
> Defendant's entire claim is based upon the Defendant's intent to occupy his RV trailer permanently, thereby converting it to a "Park Model" and making Plaintiff's property into a "Mobile Home Park". Finding in Defendant's favor results in the legal absurdity that if a camper declares that he wants to live in his trailer permanently, then the RV Park suddenly becomes a Mobile Home Park and subject to a completely separate set of laws and regulations. The implications are that the camper, not the property owner, gets to decide what rules apply, how the property should be zoned, how the land should be developed.

Haugsness' Memorandum of Authorities 1-4. AR 167-170. The Pierce County Court ruled that RV Park is an RV Park governed by RLTA, and the eviction proceeded. *Writ*. AR 176-8 & *Haugsness Testimony* Tr. 357-360 AR 1229-1232. Mobile Home Program provided a more expansive, but identical argument in this case got the same result in the *independent* Pierce County Superior Court proceeding examining the exact same issue at RV Park. Mobile Home Program, and now Ms. Allen,

continue to argue that the length of time at RV Park and various adornments placed around the RVs turn the RVs into park models.

The Pierce County proceeding also establishes room for two opinions on the topic of applicability of MHLTA to RV Park. Thereby, the Pierce County Superior Court result defeats any contention that the OAH order is arbitrary and capricious.

E. OAH Ruling Consistent with Pierce County Determinations and Permitting

Pierce County's action to determine that RV Park is an RV Park and not a mobile home park further defeats any contention that the OAH decision was arbitrary and capricious by bolstering the existence of room for two opinions.

In 2001, Pierce County undertook an unsuccessful criminal prosecution against RV Park's owner – *State of Washington v. Daniel Haugsness*. Pierce County District Court No. 1YC000120. There, the State of Washington claimed that Mr. Haugsness engaged in illegal infill, including placing RVs in floodways. *Id*. The District's Court's final Order instructed that the Appellant was to install a septic system or shut down the "RV Park". Result: Dismissal on Appeal, RV Park septic permit issued and installed. AR 147-48.

In 2008, Pierce County again unsuccessfully sought criminal prosecution – *State of Washington v. Daniel Haugsness*. Pierce County District Court Cause No. 8YC090001. AR 153-54. In December of 2007, the State of Washington made a site visit to Dan and Bill's RV Park without any warrant, and also commissioned a fly-over of Dan and Bill's RV Park without any warrant. This "evidence" was used in a subsequent criminal prosecution against Mr. Haugsness concerning alleged "illegal operation of an RV Park". *Criminal Compl.* AR 149-50. Result: Dismissal, and suppression of proposed evidence.

Mobile Home Program called a Pierce County Code Enforcement Staff Person, Jim Howe, as a witness at trial. Mr. Howe affirmed Pierce County's recent, 2014, determination that RV Park is an "RV Park". *Howe Testimony*. Tr. 260:19 & 261:10-16. AR 1132-3.

Pierce County has thus determined no less than three times, over a period spanning thirteen years and also concurrently with the purported Notice of Violation, that RV Park is an RV Park and not a mobile home park. Based on the testimony from the Pierce County staff present at hearing, the ALJ concluded "Pierce County asserted in 2004 and re-asserted in 2014 that Mr. Haugsness is operating a recreational vehicle park…" FF 4.68. These county administrative determinations underscore room for the opinion that RV Park is an RV Park and not a mobile home

park –an opinion that is clearly borne out by the facts and unchallenged findings on appeal.

F. Neither Ms. Allen Nor Mobile Home Program Sufficiently Challenged Findings of Fact on Appeal, and, Even if they had, the Facts are Supported by Substantial Evidence.

To find that MHLTA applies, this Court would need to determine from the record that RV Park holds itself out as providing real property for the placement of two or more mobile homes, manufactured homes, park models, for exclusive use as a primary residence by the occupant of the mobile home, manufactured home, or park model. The record does not bear this finding out, and, even if it did, the Petitioner has not put the Court in a position to reverse, because the Petitioner left in place approximately ninety percent of the labelled factual findings, which are now verities on appeal, no error has been assigned to findings of fact nested within conclusions of law.

Verities on appeal include: FF 4.7 (No one has a mailbox); 4.10 (Most of the residents move within the park); FF 4.24 (Ms. Allen actively seeks to leave RV Park); FF 4.30 (Resident can leave park in her licensed, self-described non-park model RV in no more than two hours); FF 4.35 (Resident can leave park in no more than forty minutes and is ready to move anytime); FF 4.38 (Park resident's installation "not permanent"); FF 4.41-42 (Park resident can leave in no more than two hours, and just

changed the RV in which he resided days before hearing); FF 4.49-51 (Park resident can leave in fifteen minutes, and regularly does to leave to drive his motorhome on road trips); FF 4.55-59 (Park resident self-describes residence an motorhome that is not permanently installed and can leave in fifteen minutes). Further, some factual findings, in the labelled conclusion of law, are also now verities. These include: Conclusion 5.23 ("Other units in the Park described by the evidence are no affixed. Their connections for electricity, water, and waste disposal, are simple connections that can be unplugged or disconnected with no more effort than unplugging a lamp or disconnecting a garden hose. The evidence is that they are movable and able to be relocated with as little as 15 minutes and no more than two hours of preparation. Although all of this are apparently primary residences, none of them is immobile or affixed, none of them is permanently or semi permanently installed"). RV Park submits that the Court could not make sufficient findings to overturn the ALJ based upon the verities on appeal.

In *Narrows*, this Court also noted that merely assigning error, but not actually briefing the errors, also leads to the findings becoming verities. Here, again, Allen assigned errors to just six findings, and did not

actually analyze the suggested error. *Br. of Allen* 5. CP _.[8] Ms. Allen formally assigned error to FF 4.8, 4.9, 4.11, 4.16, 4.18, and 4.53. Ms. Allen's entire assignment of error, and scant "analysis", occupies just one page. *Allen Br.* 5.

Finding of Fact 4.8, which states that no one rents a specific lot, is supported by substantial evidence. *Haugsness Testimomy* Tr. 355:7-18 AR 1227:

> **Q. Do those numbers designate an exclusive part of 8 the park that they are renting?**
> A. No.
> …
> **Q. Does anyone rent an exclusive part of your park?**
> A. No.
> **Q. Do people move around in your park?**
> A. Yes. In and out and around.
> **Q. Do you allow permanent fixtures to be attached to recreational vehicles?**
> A. No. And county code doesn't allow it either.

Deferential review to the ALJ and construing all reasonable inferences in favor of RV Park leads to dismissing Ms. Allen's otherwise undeveloped assignment of error.

Ms. Allen challenged Finding of Fact 4.9 to the extent that it states that Mr. Haugsness will not allow any units to be permanently installed. This finding is supported by substantial evidence:

> **Q. Are these RVs permanently installed?**

[8] RV Park did not designate the Allen and Mobile Home Program briefs for review. RV Park will promptly do so.

A. No.
Q. Are they semipermanently installed?
A. No.
Q. Would you allow them to be --
A. No.

Haugness Testimony. Resident testimony is replete with residents expressly disclaiming any permanent or semi-permanent installation. *See, i.e.* AR 157 ("not permanent), AR 173 (Absolutely not"), AR 214 ("Oh gosh, no"). Finding of Fact 4.9 is supported by substantial evidence. Deferential review to the ALJ and construing all reasonable inferences in favor of RV Park leads to dismissing Ms. Allen's otherwise undeveloped assignment of error.

Ms. Allen challenged Finding of Fact 4.11 states that RV Park requires the park residents to be ready to move any time. Mr. Haugsness explained that due to flooding risk, all campers are required to be ready to move. *Haugsness testimony*. Tr. 349. AR 1221. Further, RV Park introduced photographs taken the same week as the Notice of Violation, with the Park emptied out. AR 505-506, Trial Ex. P, *Haugsness Testimony* Tr. 350-351. AR 1222-1223. Ms. Allen's note that some residents have not actually had to move has nothing to do with the requirement that they be ready to do so. *Haugsness testimony*. Tr. 349. AR 1221. Finding of Fact 4.11 is supported by substantial evidence. Deferential review to the ALJ and construing all reasonable inferences in

favor of RV Park leads to dismissing Ms. Allen's otherwise undeveloped assignment of error.

Ms. Allen challenged Finding of Fact 4.16, which states that none of the RVs have anything permanent attached to them. This is supported by much testimony. *See, i.e.* AR 1033, 1058, 1082, 1227, 1241, 1242, 1243 (RV Park does not allow permanent fixtures to be attached, nor do residents actually have permanent attachments). Ms. Allen's "analysis" of the assigned error is not to the contrary. Deferential review to the ALJ and construing all reasonable inferences in favor of RV Park leads to dismissing Ms. Allen's otherwise undeveloped assignment of error.

Ms. Allen challenged Finding of Fact 4.18, which states that none of the residents are hardwired to RV Park. It is unclear if Ms. Allen actually understands this finding of fact, as Ms. Allen offers only that "all of the units in the park receive electricity and water and are able to dispose of sewer waste. *Allen Br*.5. True, but this finding is supported by substantial evidence and illustrated by the ALJ Order itself (Conclusion 5.23 "Their connections for electricity, water, and waste disposal, are simple connections that can be unplugged or disconnected with no more effort than unplugging a lamp or disconnecting a garden hose".) *See also Testimony* AR 1084 (Unplug my power cord from the main power on the -- at the park, undo my sewer hose and my water hose, and I'm gone); AR

1090 (“Well, right now, like when I'm parked here, I'm plugged into Dan's, you know, power system. Okay? But if I was to leave, I'd have to plug my cord into my generator and use my power off the motorhome.”), etc. The Haugsness testimony further clarifies that a non-hardwired connection means one run through a pigtail plug. AR 1216. Deferential review to the ALJ and construing all reasonable inferences in favor of RV Park leads to dismissing Ms. Allen’s otherwise undeveloped assignment of error.

Allen assigned error to Finding of Fact 4.53, which states that park residence Mr. Brodernick’s motor home is not permanently installed to the park, and he has no intention of permanently installing it. *Allen Br.* 5. This finding of fact comes directly from Mr. Brodernick’s testimony:

> **Do you intend to permanently or semi permanently install your motorhome to Dan & Bill's RV Park?**
> A. Oh, gosh, no. That would be -- there'd be no sense to it. It wouldn't make any sense. Then I couldn't go anywhere.

Ar. 1086. Finding of fact 4.53 is supported by substantial evidence. Deferential review to the ALJ and construing all reasonable inferences in favor of RV Park leads to dismissing Ms. Allen’s otherwise undeveloped assignment of error.

For the reasons described in this section, Ms. Allen's assignments of error do not withstand the standard of review, nor Ms. Allen's heavy burden. Applying the facts to the law should result in affirming the ALJ.

G. Policy Supports Affirming the OAH

The situation at RV Park does not fall within the legislature's express policy behind the MHLTA and mobile home program. RCW 59.30.010. MHLTA exists to that people do not lose their substantial investments in mobile homes, which cost about ten thousand dollars to relocate. RV Park does not exert such leverage over its tenants, whom are able to pack up and leave in minutes. "The legislature finds that there are factors unique to the relationship between a manufactured/mobile home tenant and a manufactured/mobile home community landlord. Once occupancy has commenced, the difficulty and expense in moving and relocating a manufactured/mobile home can affect the operation of market forces and lead to an inequality of the bargaining position of the parties". RCW § 59.30.010(1). *Accord* Rory O'Sullivan & Gabe Medrash, *Creating Workable Protections for Manufactured Home Owners: Evictions, Foreclosures, and the Homestead*, 49 Gonz. L. Rev. 285, 290 (2014).

> Justice Sandra Day O'Connor draws attention to this misconception in the introduction to the 1992 Supreme Court decision, *Yee v. City of Escondido*. She writes, The

> term “mobile home” is somewhat misleading. Mobile homes are largely immobile as a practical matter, because the cost of moving one is often a significant fraction of the value of the mobile home itself. They are generally placed permanently in parks; once in place, only about 1 in every 100 mobile homes is ever moved. Once sited, it is generally impractical--if not impossible--to move a manufactured home. Moving a manufactured home after it is installed “typically costs $3,000 or more, even for a short distance.” Further, the total expense of moving a manufactured home may be in excess of $10,000 when the financial burden of replacing site-specific portions of the home are considered, such as rebuilding skirting, porches, carports, and whatever improvements the manufactured home owner made to the land on which the home was initially sited.

Specific to Washington State’s requirements: All manufactured homes must meet the stringent construction and safety standards established by the Federal Government. 42 U.S.C. sec. 5401 et seq. & 24 CFR 3282 et seq. In addition, the site where the home is to be located must meet specific pad requirements, including support piers and earthquake resistant bracing systems that are required anchoring. RCW 43.22A.010 . Manufactured homes can only be installed by “certified installers”. RCW 42.22A.130. The manufactured home also must be installed by a trained and certified mobile home installation service, RCW 43.22.440; must have permanently installed water lines and permanent sewage line connections, WAC 296-1501-0310; and it must be inspected by the local building official to verify that water, waste and gas lines have been tested and passed. Also, electrical connections must be performed by a journeyman or specialty electrician and then inspected by the Department of Labor and Industries. WAC 365-210-030; WAC 296-150I-0310. Finally, the

manufactured home must then be skirted in such a manner as to provide for adequate ventilation and access. Then and only then is the owner safe to assume occupancy.

On the other hand, **recreational vehicles** are designed to be extremely easy to move and relocate. RV Park tenants all described being able to leave their plots in fifteen minutes to two hours. AR 390 (fifteen minutes to leave), AR 157 (forty minutes, max), AR 212 (fifteen or twenty minutes). The ALJ adopted this testimony. AR 869. Complainant Ms. Allen self-describes her non-permanent situation at RV Park. Ms. Allen actively sought to leave RV Park with her trailer, but did not complete a successful rental application at other RV parks. AR 119.

Apartment and house-dwellers are apt encounter far more expense and difficulty in moving than RV owners, and particularly these RV owners in this case. The RV Park does not fall within MHLTA.

H. Reversing the ALJ Order would have undesirable results.

RV Park is unable to offer year-round leases or allotted spaces because it is in a flood zone. The Court should notice that there are many other similar operations in Pierce County that flood. The record features a photograph of RV Park emptied out for flood season. Tr. Ex. P. AR 513-15. *Haugsness Testimony*. RV Park would shut down under RCW 59.20.230. The many dozens of campers that the RV Park and other nearby RV Parks provide housing for would become homeless if RV Parks are required to offer year-long leases under threat of monetary

penalty for non-compliance. Mobile Home Program will not provide stable housing for this crush of people.

I. The Superior Court Erred by Awarding Attorney's Fees Against RV Park

The Superior Court improperly awarded $41.622.25 attorney's fees against RV Park. *Findings and Conclusion Re: Atty Fees* & *Judgment*. CP 228-30, 213-214.

a. Even if MHLTA Applied, RCW 59.30.040 Expressly Prohibited the Award.

The law here is clear. "If an administrative hearing is initiated, the respondent and complainant shall each bear the cost of his or her own legal expenses". RCW 59.30.040(9). An administrative hearing was initiated, resulting in the ALJ order.

Allen's reliance upon RCW 59.20.110, a statute from 1977, "In any action arising out of this chapter, the prevailing party shall be entitled to reasonable attorney's fees and costs", is misplaced. The legislature enacted RCW 59.30 dispute resolution in 2007 so that "The purpose of the manufactured/mobile home dispute resolution program is to provide manufactured/mobile home community landlords and tenants with a cost-effective and time-efficient process to resolve disputes regarding alleged violations of the manufactured/mobile home landlord-tenant act". RCW 59.30.030(2). Further, "[RCW 59.30 Dispute Resolution] (13) is not

exclusive and does not limit the right of landlords or tenants to take legal action against another party as provided in chapter 59.20 RCW or otherwise". RCW 59.30.030(13). Ms. Allen and her attorney chose this remedy – the one that requires her to bear her own legal costs. The Court must vacate the judgment against RV Park.

b. Even if MHLTA applied, Superior Court awarded fees against wrong party

In the event the ALJ Order is not restated, Ms. Allen is not without redress. Under Washington State's Equal Access to Justice Act, Ms. Allen may seek judgment against the Attorney General, as the state agency from whom relief was obtained. RCW 4.84.340-.350. RV Park is not a state agency. There is simply no legal basis to enter judgment against RV Park.

c. Even if MHLTA applied and RV Park was correctly charged, award amount was unreasonable

RV Park submits that the trial court abused its discretion by entering a principal award of $32,042.50, and then enhancing that by a lodestar factor of 1.3 for the $41,655.25 judgment. Under RCW 4.84.350, the reasonable fee for this sort of work cannot exceed $25,000. Further, Ms. Allen's counsel did not appear until the appeal, and only filed four documents with the Court.

"Whether attorney's fees are reasonable is a question of fact to be decided in light of the circumstances of each individual case." *Marine*

Enters. v. Sec. Pac. Trading Corp., 50 Wn. App. 768, 774, 750 P.2d 1290 (Div. 1, 1988), cases cited. "The burden of proving the reasonableness of the fees requested is upon the fee applicant". *Scott Fetzer Co. v. Weeks*, 122 Wn.2d 141, 151, 859 P.2d 1210 (1993). "Courts should not simply accept unquestioningly fee affidavits from counsel." *Mahler v. Szucs*, 135 Wn.2d 398, 434-35, 957 P.2d 632, 966 P.2d 305 (1998). "The court's findings "must do more than give lip service to the word 'reasonable.' The findings must show how the court resolved disputed issues of fact and the conclusions must explain the court's analysis." *Cedar Grove Composting, Inc. v. City of Marysville*, 188 Wn. App. 695, 730, 354 P.3d 249, 265 (Div. 1, 2015). "In assessing the propriety of the trial court's award of attorney's fees, we emphasize that the standard of review is abuse of discretion". *Ermine v. Spokane*, 143 Wn.2d 636, 650, 23 P.3d 492 (2001).

d. Hours spent unreasonable

Ms. Allen's legal counsel presented a fee affidavit claiming more hours than those reasonably expended in this matter, which the superior court adopted and then applied a lodestar multuplier. *Fee Declaration*. CP 173-181. In *Absher Constr. Co. v. Kent Sch. Dist*, 79 Wn. App. 841, 905 P.2d 1229, (1995), the court struck down unreasonable fees:

> We conclude that the amount of time requested is not reasonable for the following reasons.

> First, this appeal is from a summary judgment proceeding. In such cases, this court is limited to the record presented below and the only issues presented are whether the respondent was entitled to summary judgment as a matter of law or there is a material issue of fact precluding summary judgment. There may be exceptional cases where more effort is required to defend a summary judgment than was required to win it, but we do not view this case as within the exceptional category….

Absher at 849. The Court reduced the fees by one-third. This Court should do at least the same because this is an appeal from a trial that Ms. Allen's attorney did not participate in. RV Park suggests deducting the following fees that are not permitted under lodestar to arrive at the necessary deduction.

The Court should specifically overturn the $8,000.00 charged to generate the nineteen page response brief is not reasonable. *See Dec'l Young*. CP 173-181. Ms. Allen chose to file a nineteen page brief also addressing the Attorney General's authority to enter onto private property. Ms. Allen dedicated half of the brief to these constitutional issues. *Response of Petitioner Allen to Dan & Bill's Opening Br.* 9-18. Ms. Allen further briefed the issue of whether the AGO has standing to appeal an AGO final agency order. Id. at 18-9. In total, Ms. Allen's attorney purportedly charged eight thousand dollars for this nineteen-page brief that mostly duplicated the issues covered in the Mobile Home Program

Brief and that did not pertain to Ms. Allen. *See Dec'l Young*, entries dated August 16-September 6, 2016.

On September 12, 2016, the parties filed reply briefing. Ms. Allen filed a ten-page brief. In total, Ms. Allen's attorney purportedly charged **six thousand dollars** for this ten-page brief. *See Dec'l Young*, entries dated September 7, 2016-September 12, 2016.

e. Hourly rate unreasonable

Allen's fees request included an APR 6 clerk billed at $125 per hour. Ms. Allen did not support this request with even an allegation that such an inflated rate is borne out by the market.

f. Lodestar inappropriate

Given the already-inflated fee request, the Court should overturn any lodestar multiplier.

J. Attorney General's Lack of Standing to Appeal its Own Final Order

RV Park respectfully submits that the Superior Court mishandled this case both procedurally and substantively. Ms. Allen initiated a case number in the Thurston Superior Court by filing a petition for review. RV Park filed a cross petition in that case, citing to constitutional issues discussed below. Mobile Home Program filed a separate petition for review, which generated a second case. RV Park moved to for summary judgment dismissal of the Mobile Home program for reasons stated in this

part. This Motion was not heard, because the Thurston County Court consolidated the two cases and eliminated the case number with the pending dismissal motion. Next, the Thurston Court neglected to serve on RV Park a case scheduling Order. By the time that RV Park learned of the case schedule, it was too late to renew the summary judgment motion in the consolidated case. These issues were instead raised in RV Park's superior Court Briefing. RV Park would have preferred to make the Attorney General standing a more discreet issue that it became, but, the omission of the Thurston County Court and mutual desire of the parties to move the case forward prevented this.

Washington's APA permits an agency to designate an Office of Administrative Hearing ALJ as the presiding officer authorized to make a final decision and enter a final order. RCW 34.05.425(1)(b)[9]. "Although the HLJ is an administrative law judge, she is also the agency's final decision maker…." *DaVita, Inc. v. Washington State Dep't of Health*, 137 Wash. App. 174, 183, 151 P.3d 1095, 1100 (Div. 2, 2007). Division II continues:

> WAPA defines an agency as "any state board, commission, department, institution of higher education, or officer, authorized by law to make rules or to conduct adjudicative

[9] (1) Except as provided in subsection (2) of this section, in the discretion of the agency head, the presiding officer in an administrative hearing shall be:
(a) The agency head or one or more members of the agency head;
(b) If the agency has statutory authority to do so, a person other than the agency head or an administrative law judge designated by the agency head to make the final decision and enter the final order;

> proceedings." RCW 34.05.010(2). Applied to this case, because the HLJ is an "officer, authorized by law to ... conduct adjudicative proceedings," she fits within WAPA's definition of an agency. RCW 34.05.010(2). **And classifying the HLJ as the "agency" makes sense in this context. As the designee with the authority to make final decisions, she is the officer charged with exercising the agency's discretion.** Thus, in this context, she decides how to apply the agency's expertise to evaluate the evidence. She is, after all, the one evaluating the evidence.

137 Wn.App. at 183. Emphasized. Here, the legislature has established the same delegation described in RCW 34.05.425(1) and *Davita*:

> (8) A complainant or respondent may request an administrative hearing before an administrative law judge under chapter 34.05 RCW to contest:
> (a) A notice of violation issued under subsection (5)(a) of this section or a notice of nonviolation issued under subsection (5)(b) of this section;
> (b) A fine or other penalty imposed under subsection (6) of this section; or
> (c) An order to cease and desist or an order to take affirmative actions under subsection (7) of this section.
> The complainant or respondent must request an administrative hearing within fifteen business days of receipt of a notice of violation, notice of nonviolation, fine, other penalty, order, or action. If an administrative hearing is not requested within this time period, the notice of violation, notice of nonviolation, fine, other penalty, order, or action constitutes a final order of the attorney general and is not subject to review by any court or agency.
> (9) If an administrative hearing is initiated, the respondent and complainant shall each bear the cost of his or her own legal expenses.
> (10) The administrative law judge appointed under chapter 34.12 RCW shall:
> (a) Hear and receive pertinent evidence and testimony;
> (b) Decide whether the evidence supports the attorney general finding by a preponderance of the evidence; and

> (c) Enter an appropriate order within thirty days after the close of the hearing and immediately mail copies of the order to the affected parties.
> **The order of the administrative law judge constitutes the final agency order of the attorney general and may be appealed to the superior court under chapter 34.05 RCW.**

Therefore, the OAH Order of November 9, 2015 constitutes the final order of the Attorney General. "The commitments of the attorney general and his assistants are binding upon the state." *Eastvold v. Superior Court for Snohomish Cty*, 48 Wn.2d 417, 424, 294 P.2d 418 (1956) *citing* RCW 43.10.030. Here, the Attorney General issued a "final order": "The order of the administrative law judge constitutes the final agency order of the attorney general and may be appealed to the superior court under chapter 34.05 RCW." RCW 59.30.040 (10)(c). The Attorney General is therefore enjoined to defend that final Order.

RCW 43.10.030 provides: The attorney general shall: (2) Institute and prosecute all actions and proceedings for, or for the use of the state, which may be necessary in the execution of the duties of any state officer". RCW 43.10.040 provides "The attorney general shall also represent the state and all officials, departments, boards, commissions and agencies of the state in the courts, and before all administrative tribunals or bodies of any nature, in all legal or quasi legal matters, hearings, or proceedings…." This duty is non-discretionary, and no AG arguments or posture concerning a

"paramount duty to protect interests of the people of the state" will overcome the AG's nondiscretionary duty to represent the state in this case – by defending its final agency order. *Goldmark v. McKenna*, 172 Wn.2d 568, 578, 259 P.3d 1095 (2011). The Court should dismiss the Attorney General's appeal.

Without legislative authorization, agencies cannot be "aggrieved" by their own orders, and cannot appeal their own final Orders, even when those orders are issued by an administrative law judge. "The department could not be aggrieved by its own order". *Dep't of Labor & Indus. v. Cook*, 44 Wash. 2d 671, 673, 269 P.2d 962, 964 (1954). *Cook* was superseded by statute:

> This court held in Department of Labor & Indus. v. Cook, 44 Wash.2d 671, 269 P.2d 962 (1954), that the Department did not have the right to appeal to the superior court from an adverse decision of the Board. Thereafter, in 1957, the legislature amended RCW 51.52.110, adding a proviso which gives the Department the right to appeal where the Board has reversed an order of the supervisor on questions of law or mandatory administrative actions of the director.

Aloha Lumber Corp. v. Dep't of Labor & Indus., 77 Wash. 2d 763, 774, 466 P.2d 151 (1970). No statutory provision gives Mobile Home Program the right to appeal its own final order that reverses Mobile Home Program staffers.

To achieve standing under Washington's APA, a person must demonstrate all of the following:

> (1) The agency action has prejudiced or is likely to prejudice that person;
> (2) That person's asserted interests are among those that the agency was required to consider when it engaged in the agency action challenged; and
> (3) A judgment in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the agency action.

RCW 34.05.530. The second prong is the zone of interest test: "The court's task is to determine whether the Legislature intended that Appellants' interest be protected by the agency". *Seattle Bldg. & Const. Trades Council v. Apprenticeship & Training Council*, 129 Wash. 2d 787, 797, 920 P.2d 581 (1996). Here, the legislature charged Mobile Home Program to look only to MHLTA landlords' and tenants' interests. RCW 59.30.010(2)[10], RCW 59.30.040(1)-(2)[11]. It is nonsensical that the legislature enacted the Mobile Home Program to protect the interests of the Attorney General.

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[10] The legislature finds that taking legal action against a manufactured/mobile home community landlord for violations of the manufactured/mobile home landlord-tenant act can be a costly and lengthy process, and that many people cannot afford to pursue a court process to vindicate statutory rights. Manufactured/mobile home community landlords will also benefit by having access to a process that resolves disputes quickly and efficiently.

[11] (1) The attorney general shall administer a manufactured/mobile home dispute resolution program.
(2) The purpose of the manufactured/mobile home dispute resolution program is to provide manufactured/mobile home community landlords and tenants with a cost-effective and time-efficient process to resolve disputes regarding alleged violations of the manufactured/mobile home landlord-tenant act.

"The first and third conditions are often called the injury-in-fact requirement, and the second condition is known as the "zone of interest" test. Not only are these particular provisions drawn largely from federal case law, the APA expressly states the Legislature's intent that courts should interpret provisions of this chapter consistently with decisions of other courts interpreting similar provisions of ... the federal government...." *Seattle Bldg. & Const. Trades* 129 Wash. 2d at 793-94. Citations omitted.

The Supreme Court of the United States expressly holds that agencies acting in their governmental capacity lack standing to appeal under the Federal APA. *Dir., Office of Workers' Comp. Programs, Dep't of Labor v. Newport News Shipbuilding & Dry Dock Co*., 514 U.S. 122, 127, 115 S. Ct. 1278, 1284, 131 L. Ed. 2d 160 (1995). Therefore, not only does the Attorney General have a duty to defend his final Order, the Attorney general lacks standing under the APA to file this appeal.

The legislature recognizes the significant burdens on placed on private parties like RV Park.

> The legislature finds that certain individuals, smaller partnerships, smaller corporations, and other organizations may be deterred from seeking review of or defending against an unreasonable agency action because of the expense involved in securing the vindication of their rights in administrative proceedings. The legislature further finds that because of the greater resources and expertise of the state of Washington, individuals, smaller partnerships, smaller corporations, and other organizations are often deterred from

> seeking review of or defending against state agency actions because of the costs ….The legislature therefore adopts this equal access to justice act to ensure that these parties have a greater opportunity to defend themselves from inappropriate state agency actions and to protect their rights.

RCW 4.84.340, notes. RV Park has spent significant private resources obtaining a just result at trial. RV park is entitled to process under the law, which, in this case, entails the Mobile Home Program and Attorney General defending its own final agency action, not coming back for a second bite at the apple to accomplish what it could not at trial. This Court's caption features on both side parties who have articulated identical interests. RV Park requests the Court dismiss and ignore Mobile Home Program's purported appeal. RV Park hopes that they Court will find that RV Park's due process rights have been violated by RV Park having to defend the Attorney General's own final order against the Attorney General.

K. Ms. Allen's Death Moots Relief Sought in the NOV.

Since Ms. Allen has died, and her trailer is not suitable for human habitation, this Court can no longer grant effective relief to the extent the NOV requested rental adjustments and lease terms for Ms. Allen.

L. Request for Attorney's Fees.

RV Park prevailed against the Mobile Home Program at the administrative level. If this Court reinstates the ALJ's ruling, then RV Park requests that RV Park be invited to submit a cost bill so that judgement for

fees and costs will be entered in favor of RV Park against the Attorney General's Office, per RCW 4.84.340-350 and RAP 18.1.

VI. CONCLUSION

RV Park respectfully requests that this Court reinstate the ALJ Order, and award fees to RV Park under Washington State's Equal Access to Justice Act.

RESPECTFULLY SUBMITTED this 10th day of August, 2017.

GOODSTEIN LAW GROUP PLLC

By: *s/Seth S. Goodstein*
Seth S. Goodstein, WSBA No. 45091
Carolyn A. Lake, WSBA No. 13980
Attorneys for Respondent RV Park

CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below, I caused to be served the foregoing document on the following persons and in the manner listed below:

Amy Teng Office of the Attorney General Manufactured Housing Dispute Resolution Program 800 Fifth Avenue, Ste. 2000 Seattle, WA 98104 Email: amyt2@atg.wa.gov	☑ U.S. First Class Mail ☐ Via Legal Messenger ☐ Overnight Courier ☑ Electronically via email
Dan R. Young Law Offices of Dan R. Young 1000 2nd Ave., Ste. 3200 Seattle, WA 98104 Email: dan@truthandjustice.legal	☑ U.S. First Class Mail ☐ Via Legal Messenger ☐ Overnight Courier ☑ Electronically via email
Leslie W. Owen Northwest Justice Project 711 Capitol Way S #704 Olympia, WA 98501 Email: leslieo@nwjustice.org	☑ U.S. First Class Mail ☐ Via Legal Messenger ☐ Overnight Courier ☑ Electronically via email

DATED this 10th day of August 2017, at Tacoma, Washington.

s/Seth S. Goodstein
Seth S. Goodstein

RV Park does not contain two park models.

Let's be abundantly clear: there are not two park models in RV Park. By way of background, this is a typical[2] Park Model RV, installed:

This is a typical park model RV[3], awaiting installation:

The differences between a Park Model and the following **recreational vehicles** are clear.

[2] *Park Models Direct.* https://www.parkmodelsdirect.com/AT/galleries/Fulton/images/Park-Model-Homes-sm.jpg. Image. Accessed June 18, 2015.

[3] *Forest Hills Park Model Trailer Model 1160 – Pick your next RV Park Model Now!* http://www.foresthillsgolfrv.com/park_models/images/1160.jpg . Image. Accessed June 16, 2015.

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This is a "Motorhome"[4] recreational vehicle:

This is a Travel Trailer[5] recreational vehicle:

This is a Fifth Wheel[6] recreational Vehicle:

The difference in an RV and a park model is plain, and should be immediately obvious to anyone who works for a "Mobile Home Dispute Resolution Program". As explained

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[4] Claygate. *RV_classA.jpg*. https://commons.wikimedia.org/wiki/File:Rv_classa.jpg. Accessed June 16, 2015.

[5] Heartland Recreational Vehicles, LLC. *Side profile of a 2011 Sundance travel trailer.* https://commons.wikimedia.org/wiki/File:HRV_WC_SD_TT_2011Ext_02.jpg. Accessed June 16, 2015.

[6] Source and author: Heartland Owners Forum. *Caravan of Heartland Bighorns on the way to the Summer 2009 Oregon Rally in Winchester, OR.* https://commons.wikimedia.org/wiki/File:HRV_WC_Bighorn_LI01.JPG. Accessed June 16, 2015.

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